

May 27, 2022

VIA ECF

The Honorable Pamela K. Chen
United States District Court
Eastern District of New York
225 Cadman Plaza East, Chambers N 631
Brooklyn, NY 11201

Re: **SEC v. Richard Xia et al., 21-cv-05350-PKC-RER**

Dear Judge Chen:

Plaintiff Securities and Exchange Commission (“SEC”); Defendants Richard Xia (“Xia”) and Fleet New York Metropolitan Regional Center (“Fleet,” and with Xia, “Defendants”); and Relief Defendants Julia Yue (“Yue”), Xi Verfenstein (“Verfenstein”), and Xinming Yu (“Yu,”), respectfully submit this joint letter pursuant to the Court’s text order dated May 23, 2022.

I. SEC’s motion for a preliminary injunction freezing assets, appointing a monitor, and granting other relief

- Dkt. 2-2: Plaintiff’s Memorandum of Law in Support of its Ex Parte Emergency Application for a Temporary Restraining Order Freezing Assets, Appointing a Monitor and Granting Other Relief
 - Dkt. 2-3: Local Rule 6.1 Declaration of David Stoelting
 - Dkt. 3: Declaration of Robert Thompson
 - Dkt. 4: Declaration of Annie Seelaus
 - Dkt. 5: Declaration of Sunil K. Aggarwal
 - Dkt. 6: Declaration of Kim Han (with Exhibits 1 – 89)
 - Dkt. 7: Declaration of Raymond Dookhie (with Exhibits 1 – 51)
- Dkt. 43 – Defendants’ Brief in Response to the Court’s Show-Cause Order
 - Dkt. 44: Declaration of Herve Gouraige
 - Dkt. 46: Exhibits 1 – 45
- Dkt. 48 – Plaintiff’s Reply Memorandum of Law in Response to Defendants’ Brief Opposing the Show-Cause Order
- Dkt. 103 – Plaintiff’s Post-Hearing Memorandum of Law in Support of Its Motion for a Preliminary Injunction Freezing Assets and Appointing a Monitor Pending Final Judgments

Hon. Pamela K. Chen

May 27, 2022

Page 2

- Dkt. 124 – Defendants’ Post-hearing Memorandum of Law in Opposition to Plaintiff’s Motion for a Preliminary Injunction Freezing Assets and Appointing a Monitor Pending Final Judgments
 - Dkt. 125: Declaration of Mark C. Rifkin (with Exhibits A and B)
- Dkt. 132 – SEC’s Reply Memorandum of Law in Further Support of Plaintiff’s Motion for a Preliminary Injunction Freezing Assets and Appointing a Monitor Pending Final Judgments
 - Dkt. 132-1: Declaration of M. Scott Peeler

Status: Counsel for the SEC and for Defendants have had some discussions regarding a negotiated stipulation. The parties could not reach a resolution of the motion.

II. Defendants’ and Relief Defendant Yue’s request for a pre-motion conference concerning their anticipated motion to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6)

- Dkt. 27 – Defendants’ and Yue’s letter requesting a pre-motion conference
- Dkt. 28 – SEC’s letter in opposition
- Dkt. 52 – Defendants’ and Yue’s supplemental letter in support of their request for a pre-motion conference (with Exhibits 1 – 6)
- Dkt. 59 – SEC’s letter responding to Defendants’ and Yue’s supplemental letter

Status: The parties have not had any discussions regarding a negotiated stipulation that would resolve this motion.

III. The Sills Cummis law firm’s motion to withdraw as counsel for Xia, Fleet and Yue and for release of funds to pay attorney’s fees or for an equitable lien

- Dkt. 89 – Sills Cummis Motions to Withdraw as Counsel and for Release of Frozen Assets Sufficient to Pay Attorney’s Fees
 - Dkt. 89-1: Declaration of Herve Gouraige (with Exhibits 1 – 4)
 - Dkt. 90 – Motion by Fleet, Xia and Yue to file document under seal
- Dkt. 94 – Plaintiff’s Response to Motion to Withdraw as Counsel and for Release of Frozen Assets Sufficient to Pay Attorney’s Fees
 - Dkt. 95 – Declaration of David Stoelting (with Exhibits 1 – 6)

Status: The SEC takes no position on the motion to withdraw, but opposed the motion to unfreeze \$624,534.21 to pay attorney’s fees. The SEC and Mr. Gouraige have had discussions regarding Sills’ motion to pay attorney fees, and a negotiated stipulation that would resolve this motion is not a possibility. Defendants’ current counsel, Wolf Haldenstein, has not been part of any discussion regarding the motion to withdraw or payment of fees to Defendant’s other counsel.

Hon. Pamela K. Chen

May 27, 2022

Page 3

IV. (a) SEC's motion to extend the asset freeze as to Yue and for an asset freeze as to Verfenstein and Yu; (b) SEC's motion to strike sur-reply or, in the alternative, accept SEC letter as sur-sur reply; and (c) Ms. Verfenstein and Ms. Yu's motion for leave to file a sur-reply to respond to arguments raised by the SEC in its reply

- Dkt. 99: Notice of Motion
- Dkt. 100: Plaintiff's Brief in Support of Motion to Extend the Asset freeze to Certain Assets of Relief Defendants Julia Yue, Xi Verfenstein and Xinming Yue
 - Dkt. 101: Declaration of Kim Han (with Exhibits 1 – 37)
 - Dkt. 102: Declaration of Kim Han (with Exhibits 38 – 70)
- Dkt. 120 – Relief Defendants Xi Verfenstein and Xinming Yu's Memorandum of Law in Opposition to Plaintiff's Motion to Extend the Asset Freeze to Certain Assets
 - Dkt. 121: Declaration of Michael J. Rinaldi (with Exhibits A – L)
- Dkt. 127 – Defendants' Memorandum of Law in Opposition to Plaintiff's Motion to Expand Asset Freeze
- Dkt. 128 – SEC's Reply Memorandum of Law in Support of Plaintiff's Motion to Extend the Asset Freeze to Certain Assets of relief Defendants Xi Verfenstein and Xinming Yu
- Dkt. 133 – SEC's Reply Memorandum of Law in Further Support of Plaintiff's Motion to Extend the Asset Freeze to Certain Assets of the Relief Defendants
- Dkt. 134 – Letter-motion of Ms. Verfenstein and Ms. Yu for leave to file a sur-reply to respond to arguments raised by the SEC in its reply
 - Dkt. 135: Declaration of Michael J. Rinaldi (with Exhibits A – E)
- Dkt. 136 – SEC's letter-motion to strike Verfenstein and Yu's sur-reply or, in the alternative, to accept the SEC's letter as its sur-sur-reply
- Dkt. 137 – Relief Defendants Xi Verfenstein and Xinming Yu's Memorandum of Law in Opposition to Plaintiff's Motion to Strike
 - Dkt. 138: Declaration of Michael J. Rinaldi (with Exhibits A – C)

Status: The parties conferred by telephone on the SEC's motion to extend the asset freeze, the SEC's motion to strike, and Ms. Verfenstein and Ms. Yu's motion for leave to file a sur-reply but did not reach an agreement on any of the motions.

V. Monitor's motion for release of funds to pay for insurance coverage

- Dkt. 139: Notice of Motion
- Dkt. 140: Motion for Approval of Release of Funds for Insurance Coverage
 - Declaration of Scott Peeler (with Exhibits A – D)

Status: The SEC has consented to this motion. Xia and Fleet have also consented to the relief sought in the motion.

Hon. Pamela K. Chen

May 27, 2022

Page 4

VI. Monitor's Fee Application

- Dkt. 140: Motion for Approval of Interim Fee Application of Monitor M. Scott Peeler for Payment of ArentFox Schiff LLP and Monitor's Expert J.S. Held
 - Exhibits A – C

Status: The SEC has consented to this motion. The Defendants and Relief Defendants have not yet reviewed the motion.

Respectfully submitted,

/s/ David Stoelting

Kevin P. McGrath

David Stoelting

Kim Han

Securities and

Exchange

Commission

Attorneys for Plaintiff

/s/ Mark C. Rifkin

Benjamin Y. Kaufman

Mark C. Rifkin

Wolf Haldenstein Adler Freeman &

Herz LLP

Attorneys for Defendants

/s/ Michael J. Rinaldi

Michael J. Rinaldi

Mary P. Hansen

Duane Morris LLP

Attorneys for Relief Defendants Xi

Verfenstein and Xinming Yu

/s/ Hervé Gouraige

Hervé Gouraige

Sills Cummis

Attorneys for Defendants and Julia

Yue